**IN THE GENERAL DIVISION OF**
**THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

**[2026] SGHC 238**

Magistrate's Appeal No 9047 of 2026

Between

Husain Arif

*...Appellant*

And

Public Prosecutor

*...Respondent*

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# JUDGMENT

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[Criminal Law — Offences — Hurt]
[Criminal Law — Offences — Sexual offences]
[Criminal Procedure and Sentencing — Sentencing — Framework]

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# Husain Arif
# v
# Public Prosecutor

# [2026] SGHC 238

General Division of the High Court — Magistrate's Appeal No 9047 of 2026
Mavis Chionh Sze Chyi J
21 August 2026

19 November 2026 Judgment reserved.

**Mavis Chionh Sze Chyi J:**

## Introduction

1 The appellant in this case ("Appellant") claimed trial in the court below to three charges of voluntarily causing hurt ("VCH") under s 323 of the Penal Code 1871 (2020 Rev Ed) ("PC") (collectively, "VCH Charges") and one charge of outrage of modesty ("OM") under s 354(1) PC ("OM Charge"). In respect of the first of the VCH Charges, which involved the punching and kicking of the victim Miah Md Soikat ("Soikat"), the Appellant was alleged to have acted together with one Khan Mohammad Sobuj ("Khan") and other unknown subjects in furtherance of their common intention. The remaining two VCH Charges and the OM Charge were committed against another victim

("Complainant").[1] All four offences were committed on the night of 23 July 2023, sometime after 10.20pm. At the time of these offences, Soikat was the Complainant's boyfriend, whereas the Appellant was the Complainant's former boyfriend.

2 After a 13-day trial, the district judge ("DJ") convicted the Appellant of all four charges.[2] The total sentence imposed by the DJ amounted to seven months and 18 weeks' imprisonment. No caning was imposed by the DJ.[3] The individual sentences for the four charges are set out in the table below:

| **Charge No.** | **Offence provision** | **Description[4]** | **Sentence[5]** |
|---|---|---|---|
| MAC-908126-2023 ("**1st Charge**") | Section 323 r/w s 34 PC | 23 July 2023, sometime after 10.20pm<br>Together with Khan and other unknown subjects, in furtherance of a common intention, voluntarily caused hurt to Soikat, by punching and kicking him on multiple parts of his body, causing him to sustain bruising and abrasion over his right face with periorbital oedema, nasal swelling and left upper lip bruising | 12 weeks' imprisonment<br>(consecutive) |
| MAC-908127-2023 ("**2nd Charge**") | Section 323 PC | 23 July 2023, sometime after 10.20pm<br>Voluntarily caused hurt to the Complainant, by choking the Complainant's neck from the front, causing her to suffer bodily pain | One week's imprisonment<br>(concurrent) |

1 A gag order was imposed on the identity of the Complainant. She was referred to as "Complainant" in the decision below, and I adopt the same for consistency.

2 Grounds of Decision ("GD") at [3] (Record of Appeal ("ROA") p 1036).

3 GD at [5] (ROA p 1036).

4 Charge Sheets (ROA pp 6–9).

5 GD at [4] (ROA p 1036).



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| | | | |
|---|---|---|---|
| MAC-908128-2023 ("**3rd Charge**") | Section 323 PC | 23 July 2023, sometime between 10.40pm and 11.15pm, in the vicinity of Exit A of Nicoll Highway MRT Station<br>Voluntarily caused hurt to the Complainant, by biting the right side of her face, causing her to sustain a bite mark on her right cheek | Four weeks' imprisonment<br>(consecutive) |
| MAC-908129-2023 ("**OM Charge**") | Section 354(1) PC | 23 July 2023, sometime between 10.40pm and 11.15pm, in the vicinity of Exit A of Nicoll Highway MRT Station<br>Hugging the Complainant and kissing her on her right chest area without her consent | Seven months and two weeks' imprisonment<br>(consecutive) |
| **Global sentence:** | | | Seven months and 18 weeks' imprisonment |

3 The Appellant has appealed only against sentence.[6]

4 Having considered parties' written and oral submissions, I dismiss the appeal and uphold the Appellant's global sentence of seven months and 18 weeks' imprisonment. The reasons for my decision are as follows.

## Facts

5 As the Appellant is not appealing against his conviction, I do not set out in this judgment the full facts of the case and the various findings made by the DJ on the evidence adduced at trial. These can be found at *Public Prosecutor v Husain Arif* [2026] SGMC 40 ("GD"). I summarise below only those facts which are material to the appeal against sentence.

6 Notice of Appeal (ROA p 10).



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6 In respect of the 1st Charge, the Appellant and Khan had punched Soikat's face multiple times until he bled and fell to the ground.[7] When Soikat fell to the ground, both the Appellant and Khan kicked him in the face.[8] According to Soikat's Khoo Teck Puat Hospital medical report dated 17 August 2023[9] ("Soikat's Medical Report"), "there was bruising and abrasion over [Soikat's] right face with periorbital oedema. There was nasal swelling and left upper lip bruising". Soikat was diagnosed with "[f]acial contusions secondary to alleged assault".[10] A photograph of Soikat's bloodied face, in the immediate aftermath of the attack, was also tendered as evidence at trial.[11]

7 In respect of the 2nd Charge, the Appellant choked the Complainant with one hand. The amount of force used by the Appellant was sufficient to cause marks on the Complainant's neck which were observed by the latter's employer after the incident.[12]

8 In respect of the 3rd Charge, the Appellant tried to kiss the Complainant on her face and lips while they were at the taxi stand in the vicinity of Exit A of Nicoll Highway MRT Station ("Taxi Stand"). When the Complainant tried to move away, the Appellant became angry and bit the Complainant's cheek.[13] The injury on her cheek is documented in a photograph taken after the incident,[14] as

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7 GD at [9(a)]–[9(d)] (ROA pp 1037–1038).

8 GD at [9(c)]–[9(d)] (ROA p 1038).

9 Exhibit P3 (ROA p 1068).

10 GD at [9(g)] (ROA p 1039); Exhibit P3 (ROA p 1068).

11 Exhibit P16.5 (ROA p 1104).

12 GD at [10(a)]–[10(b)] (ROA p 1039). See also Exhibit P16.3 (ROA p 1102).

13 GD at [11(b)] (ROA p 1040).

14 Exhibit P16.4 (ROA p 1103).



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well as her Tan Tock Seng Hospital medical report dated 12 August 2023[15] ("Complainant's Medical Report"). *Per* the Complainant's Medical Report, she was "diagnosed to have been assaulted complicated by a right cheek small sub-centimetre wound". A witness testified to having seen "teeth marks" on the Complainant's cheek, and another witness testified to having observed blood on her cheek.[16]

9 In respect of the OM Charge, this was committed when the Appellant continued to try to kiss the Complainant after biting her cheek. The Appellant put his hands around the Complainant so that she could not move away from him and then kissed her on her right chest area without her consent.[17] An eyewitness reported having seen the Appellant "hugging" the Complainant "tightly".[18] The Appellant himself also admitted to having hugged the Complainant at the Taxi Stand without her consent.[19]

10 I add that although there was evidence that the Appellant was drunk and smelled of alcohol during the assault,[20] the Prosecution did not cite intoxication as an aggravating factor for sentencing purposes. Given that the extent of the Appellant's intoxication was unclear, the DJ also did not account for his state of intoxication as an aggravating factor in sentencing.[21]

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15 Exhibit P5 (ROA p 1071).

16 GD at [11(d)]–[11(e)] (ROA p 1040).

17 GD at [11(b)] (ROA p 1040).

18 GD at [11(d)] (ROA p 1040).

19 GD at [14] (ROA p 1041).

20 GD at [9(d)] (ROA p 1038) and [11(d)] (ROA p 1040).

21 GD at [39] (ROA p 1050).



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## Decision below

### *VCH Charges*

11 For the VCH Charges, parties were agreed, and the DJ accepted,[22] that the applicable sentencing framework was that set out at [64] of *Niranjan s/o Muthupalani v Public Prosecutor* [2024] 3 SLR 834 ("*Niranjan*") ("*Niranjan* Framework"). I outline the *Niranjan* Framework at [47] below.

12 For the 1st Charge, the DJ found that an indicative sentence of eight weeks' imprisonment (highest end of Band 1 of the *Niranjan* Framework) was appropriate because:

(a) Soikat was given seven days' medical leave and was diagnosed with "facial contusions". The injuries were inflicted on vulnerable parts of Soikat's body, *ie*, his face, eyes and nose. The DJ found it helpful to refer to the photographs tendered[23] to "appreciate the context and extent of Soikat's injuries".[24]

(b) The DJ held that the present case would not fall within Band 2 of the *Niranjan* Framework because it "was not the case here" that there was "hurt resulting in hospitalisation or a substantial period of medical leave, simple fractures, or temporary or mild loss of a sensory function".[25]

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22 GD at [40] (ROA pp 1050–1051).

23 Exhibit P9.7 (ROA p 1080) and Exhibit P9.9 (ROA p 1081).

24 GD at [42] (ROA p 1052).

25 GD at [41] (ROA pp 1051–1052).



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13 The DJ then applied an uplift of four weeks[26] on the basis of the following aggravating factors:[27]

(a) This was a group assault.

(b) The attack was unprovoked.

(c) The manner of attack was vicious**,** comprising the punching and kicking of multiple parts of Soikat's body.

(d) There was persistent and continued assault even after Soikat fell to the ground with blood on his face.

(e) The attack took place in a public setting; namely, a grass patch near an MRT station which is a public place with passers-by or which is accessible by members of the public.

14 As the DJ found that there were no mitigating factors,[28] she sentenced the Appellant to 12 weeks' imprisonment for the 1st Charge.[29] For completeness, Khan (the co-accused) faced a similar charge to the Appellant's 1st Charge for his role in the assault, and the DJ imposed the same sentence on Khan.[30]

15 For the 2nd Charge, the DJ found that an indicative sentence of two days' imprisonment (low end of Band 1 of the *Niranjan* Framework) was appropriate. While the Complainant was not given medical leave and the

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26 GD at [44] (ROA p 1053).

27 GD at [43] (ROA pp 1052–1053).

28 GD at [44] (ROA p 1053).

29 GD at [45] (ROA p 1053).

30 GD at [3] (ROA p 1035).



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Complainant's Medical Report did not include a clinical observation of the neck area, the DJ accepted that the Appellant had used considerable force to choke the Complainant's neck which was a vulnerable part of the body. The DJ relied on evidence from the Complainant's employer about having seen marks on the Complainant's neck after the incident, as well as the photograph showing red marks on the Complainant's neck.[31]

16 The DJ then applied an uplift of five days[32] to the indicative sentence of two days' imprisonment to account for the following aggravating factors:[33]

(a) The attack was unprovoked.

(b) The manner of the Appellant's action was violent. The DJ relied on the Complainant's testimony where she had stated: "he choked me and tried to---and he said the word calls like 'Bitch' to me. And tried to lift me using his hand and throw me in the tree".

(c) The attack took place in a public setting.

17 The DJ found that there were no mitigating factors and accordingly sentenced the Appellant to one week's imprisonment for the 2nd Charge.[34]

18 As for the 3rd Charge, the DJ found that an indicative sentence of one week's imprisonment (low end of Band 1 of the *Niranjan* Framework) was appropriate. The Appellant had bitten the Complainant on a vulnerable part of

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31 GD at [46]–[47] (ROA p 1053). See Exhibit P16.3 (ROA p 1102) for the photograph of the Complainant's neck.

32 GD at [49] (ROA p 1054).

33 GD at [48] (ROA pp 1053–1054).

34 GD at [49]–[50] (ROA p 1054).



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the body – *ie,* the face; and while the injury was a "small sub-centimetre wound" and no medical leave was given, there was bleeding and the Complainant also felt pain. The DJ found it helpful to refer to the photograph tendered in court to appreciate the context and extent of the wound.[35]

19 The DJ then applied an uplift of three weeks' imprisonment to account for the following aggravating factors:[36]

(a) The Appellant's conduct was deplorable. He bit the Complainant's cheek because he was unsuccessful in kissing her face and lips.

(b) The act of biting is unhygienic, and saliva (especially with an open wound in this case) entails a risk of transmitting disease.

(c) The attack took place in a public setting.

20 The DJ found that there were no mitigating factors,[37] and accordingly sentenced the Appellant to four weeks' imprisonment for the 3rd Charge.[38]

***OM Charge***

21 Parties were agreed, and the DJ accepted,[39] that a modified version of the framework set out in *Kunasekaran s/o Kalimuthu Somasundara v Public Prosecutor* [2018] 4 SLR 580 ("*Kunasekaran*") ("Modified *Kunasekaran*

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35 GD at [51]–[52] (ROA pp 1054–1055). See Exhibit P16.4 (ROA p 1103) for the photograph of the Complainant's cheek.

36 GD at [53] (ROA p 1055).

37 GD at [54] (ROA p 1055).

38 GD at [55] (ROA p 1056).

39 GD at [56]–[58] (ROA pp 1056–1057).



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Framework") should apply to the OM Charge. The modification was to take into account the legislative amendments which had increased the maximum penalty for a s 354(1) PC offence. I discuss the Modified *Kunasekaran* Framework at [62]–[74] below. The DJ also referred parties to *Public Prosecutor v Lim Choon Kiat Kevin* [2024] SGMC 56 ("*Kevin Lim*").[40] In *Kevin Lim,* the district judge accepted – in sentencing an accused for a charge under the post-amendment s 354(1) PC – the Prosecution's submissions for the application of the Modified *Kunasekaran* Framework (at [25]).

22 The Modified *Kunasekaran* Framework agreed on by parties and accepted by the DJ is set out at [57] of the DJ's GD. The DJ found that the OM Charge in the present case fell at the lowest end of Band 2 of the Modified *Kunasekaran* Framework in light of the following offence-specific aggravating factors:[41]

(a) The act of intrusion in this case involved the Complainant's right chest area, which constituted "an intrusion of her private part at the upper part of the breast area, similar to that in *Kevin Lim*." The DJ disagreed with the Defence's argument that it was the side of the breast which was exposed. Referring to the photographic evidence of the Complainant's clothing at the time of the offence,[42] the DJ found that "the focal point pertained to [the] Complainant's visibly exposed chest area".

(b) There was skin-on-skin contact.

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40 GD at [60]–[62] (ROA pp 1058–1059).

41 GD at [64]–[65] (ROA pp 1061–1062).

42 Exhibit P13, p 5 (ROA p 1090).



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(c) The contact was not fleeting because the Appellant was hugging the Complainant and kissing her on her chest area.

(d) There was restraint as the Appellant was hugging the Complainant tightly. The DJ relied on the Complainant's testimony that she was unable to move, as well as an eyewitness's testimony that the Complainant wanted to escape but could not do so.

(e) The act of kissing is intimate. There was proximity of contact between the Appellant's mouth and the Complainant's chest area. This involved closer contact than (for example) the act of touching with one's fingers.

(f) The Appellant was "persistent" in his advances towards the Complainant. When the Appellant first tried to kiss the Complainant, the Complainant had avoided the kiss – but the Appellant still proceeded with his overtures. Moreover, there was "a degree of escalation" in how the Appellant started by trying to kiss her face, followed by biting her cheek, and escalated to hugging her and kissing her chest area.

(g) The Complainant felt that this was "[v]ery disrespectful" and she did not consent to it.

23 The DJ found that there were no offender-specific aggravating or mitigating factors. In the circumstances, she sentenced the Appellant to seven months and two weeks' imprisonment for the OM Charge. Although the Prosecution argued for caning of three strokes to be imposed, the DJ found that there was no need to impose caning.[43]

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[43] GD at [66]–[67] (ROA pp 1062–1063).



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### *Total sentence*

24 The DJ ordered the sentences for the 1st Charge, the 3rd Charge and the OM Charge to run consecutively, resulting in a total sentence of seven months and 18 weeks' imprisonment (*ie*, approximately 11.5 months).[44] In the DJ's view, this total sentence was appropriate and in line with the Appellant's overall criminality.[45]

## Parties' cases

25 I next summarise the submissions made by the parties on appeal. Parties' respective positions on appeal (as reflected in their written submissions) are set out in the following table:

| Charge | Appellant's position | Respondent's position |
|---|---|---|
| **1st Charge** | Four weeks' imprisonment (consecutive) | 12 weeks' imprisonment (consecutive) |
| **2nd Charge** | One week's imprisonment (concurrent) | One week's imprisonment (concurrent) |
| **3rd Charge** | Fine / One week's imprisonment (concurrent) | Four weeks' imprisonment (consecutive) |
| **OM Charge** | Two to three months' imprisonment (consecutive) | Seven months and two weeks' imprisonment (consecutive) |
| **Global sentence** | Two to three months and four weeks' imprisonment | Seven months and 18 weeks' imprisonment |

44 GD at [5] (ROA p 1036) and [69] (ROA p 1063).

45 *Ibid*.



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However, the Appellant also advanced various alternative positions in oral submissions which I explain further below.

### *Appellant's case*

*VCH Charges*

26 In respect of the 1st Charge, the Appellant submits that the DJ erred in setting the indicative starting point at the top of Band 1 of the *Niranjan* Framework (*ie*, eight weeks' imprisonment) and then in applying an uplift of four weeks.[46] In his written submissions, the Appellant took the position that the appropriate starting sentence for the 1st Charge should be four to six weeks' imprisonment.[47] The Appellant asserted that Soikat suffered only facial contusions: there were no fractures nor sensory loss; and instead of being hospitalised, he was discharged on the same day with seven days of medical leave.[48]

27 The Appellant further contended in his written submissions that there should be no uplift from the indicative starting sentence of four to six weeks' imprisonment. In view of the Appellant's contention, I asked his counsel to clarify at the hearing whether he was taking the position that there were *no* aggravating factors to be accounted for at the second stage of the *Niranjan* Framework. At this juncture, counsel conceded that the group nature of the attack and the continuation of the attack even after Soikat fell *were* aggravating factors.[49] Nevertheless, counsel sought to argue that the aggravating weight of

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46 Appellant's written submissions ("AWS") at para 14.

47 AWS at para 17.

48 AWS at para 15.

49 Transcript of hearing on 21 August 2026 ("Transcript") at p 7 (lines 13–21).



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these factors would be "limited" because the extent of Soikat's injuries "inform[s]" the extent of viciousness in the group attack and the attack even after Soikat fell to the ground.[50] So far as I was able to understand, counsel's point was that although this was a group attack, the attack "could have been worse"[51] and was "not as vicious as the word 'group attack' tends to imply".[52] Counsel also suggested, in the alternative, that a one to two weeks' uplift would be appropriate at the second stage of the *Niranjan* Framework.[53]

28 As for the 2nd Charge, the Appellant did not challenge the DJ's findings in his written submissions;[54] and at the hearing before me, his counsel confirmed that he was not appealing against the sentence imposed for the 2nd Charge.[55]

29 In respect of the 3rd Charge, the Appellant took the position in his written submissions that a sentence of one week's imprisonment or a fine was appropriate.[56] It was argued that the DJ had erred in placing "excessive" weight on the act of biting as an aggravating factor, as the objective medical evidence showed that the dermis was not breached, there was no active bleeding or infection, and the Complainant was not given medical leave.[57] While the Appellant purported to accept that the act of biting could be a means of inflicting severe harm, he argued that this was not the case here because the bite was a "momentary, isolated act" in an "emotional, heated verbal argument between

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50 Transcript at p 8 (lines 19–28).

51 Transcript at p 6 (lines 7–14).

52 Transcript at p 8 (line 32) to p 9 (line 1). See also AWS at para 16.

53 Transcript at p 7 (lines 22–24) and p 9 (lines 2–4).

54 AWS at para 20.

55 Transcript at p 9 (lines 12–13).

56 AWS at para 24.

57 AWS at para 22.



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ex-partners".[58] Further, counsel for the Appellant claimed – in oral submissions – that the level of distress caused to members of the public and the humiliation caused to the Complainant in this case would be low because this would not have been an "apparent or outright obvious attack to a passing observer".[59] So far as I was able to understand, counsel's point was that the Appellant's act of biting was not as serious as some other forms of attack (*eg*, a knife attack).[60]

30 In oral submissions, counsel for the Appellant also conceded that it was aggravating that the Appellant had bitten the Complainant after trying unsuccessfully to kiss her – although he claimed that the aggravating weight of this factor was limited because the Appellant and the Complainant were (allegedly) "on-and-off boyfriend-girlfriend".[61] In light of the concessions made in oral submissions, counsel for the Appellant submitted in the alternative that an uplift of a half-week to one week "would not be unreasonable" at the second stage of the *Niranjan* Framework.[62]

*OM Charge*

31 In respect of the OM Charge, the Appellant took the position in his written submissions that the present case fell within Band 1 of the Modified *Kunasekaran* Framework, with the appropriate indicative sentence being two to three months' imprisonment.[63] In oral submissions, however, counsel for the Appellant conceded that there were at least two offence-specific factors present:

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58 AWS at para 23.

59 Transcript at p 10 (line 31).

60 Transcript at p 11 (lines 19–24).

61 Transcript at p 12 (lines 1–14).

62 Transcript at p 12 (lines 15–17).

63 AWS at para 36.



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(a) there was skin-on-skin contact (including the fact that the kiss on the Complainant's chest was an intimate act); and (b) the contact in question was not fleeting.[64] Counsel accepted that the present offence would accordingly fall within Band 2 of the Modified *Kunasekaran* Framework and that a starting sentence of seven months and two weeks' imprisonment – at the lowest end of Band 2 – would be appropriate.[65]

32 Having accepted that the offence fell within Band 2 of the Modified *Kunasekaran* Framework, the Appellant nevertheless disagreed with several aspects of the DJ's findings in relation to the OM Charge. First, the Appellant disagreed with the DJ's finding[66] that there was an intrusion of the Complainant's "private part". The Appellant argued, firstly, that the DJ erred in finding that he had kissed the upper part of the Complainant's right breast area.[67] Further and in any event, according to the Appellant, case law has made it clear that the term "private parts" – in the context of sexual offences – refers strictly to genitalia,[68] and that where the breasts are involved, "only the nipples" would constitute "private parts".[69]

33 The Appellant also argued that the degree of sexual exploitation in this case was "exceptionally low" because the contact occurred over a "brief duration during a public verbal argument". There was no weapon used, no premeditation or deception on the part of the Appellant, no abuse of a position

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64 Transcript at p 24 (line 28) to p 26 (line 27).

65 Transcript at p 28 (lines 1–8).

66 GD at [64(a)] (ROA p 1061).

67 Transcript at p 13 (lines 12–14).

68 AWS at para 28.

69 Transcript at p 21 (lines 18–19).



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of trust, and no evidence of physical injury or psychological harm having been caused to the Complainant.[70]

34 In this connection, the Appellant contended that the DJ should have given weight to the "undeniable factual context" of the OM Charge. The crux of the Appellant's submissions appeared to be that the OM Charge had occurred in the course of an "emotional confrontation between former partners" where the Appellant sought "(albeit misguided) to calm the Complainant down during a heated quarrel".[71] The Appellant claimed that this stood in stark contrast to "classic Band 2 cases involving predatory sexual assault by a stranger upon an unsuspecting member of the public".[72] In so far as the DJ had relied on *Kevin Lim*, the Appellant contended that the present case was distinguishable from *Kevin Lim* because *Kevin Lim* was also a case of a stranger sexually assaulting a female pedestrian at a traffic junction in broad daylight.[73] Additionally, the offender in that case had relevant antecedents and multiple similar charges taken into consideration for sentencing.[74]

*Total sentence*

35 Citing the one-transaction rule, the Appellant argued that the sentences for the 2nd Charge, 3rd Charge and the OM Charge should run concurrently as they all involved the same victim (*ie*, the Complainant) and occurred within a

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70 AWS at para 29.

71 AWS at paras 30–31.

72 AWS at para 32; Transcript at p 26 (lines 1–11).

73 AWS at paras 33–35.

74 AWS at para 34.



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single, brief temporal window (*ie*, between 10.20pm and 11.15pm) at a single location (*ie*, immediate vicinity of Exit A of Nicoll Highway MRT Station).[75]

36 Citing the totality principle, the Appellant also argued that the total sentence of seven months and 18 weeks' imprisonment imposed by the DJ was manifestly excessive, disproportionate, and crushing for a 31-year-old first-time offender involved in "a single night's localised dispute".[76] Instead, according to the Appellant, running the 2nd Charge, 3rd Charge and the OM Charge concurrently would achieve "a total sentence that correctly reflects the Appellant's overall criminality".[77] In other words, according to the Appellant, *only* the 1st Charge and the OM Charge should run consecutively.[78]

***Respondent's case***

*VCH Charges*

37 The Respondent, for its part, took the position that the sentence of 12 weeks' imprisonment for the 1st Charge was not manifestly excessive. The indicative starting sentence of eight weeks' imprisonment was "amply justified" given that Soikat suffered injuries to a vulnerable body part: according to the Respondent, a bruise to Soikat's eye should be regarded as being inherently more serious than a bruise to (for example) his forearm.[79] In addition, the doctor who had examined Soikat (PW2 Dr Lim Zi Xuan) testified that the swelling and bruising on Soikat's eye was so bad that he "[was not] able to blink much",[80]

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75 AWS at paras 37–40.

76 AWS at para 42.

77 AWS at para 43.

78 Transcript at p 28 (lines 31–32).

79 Transcript at p 42 (lines 10–32).

80 Notes of Evidence ("NE") Day 1, p 49 (lines 28–30) (ROA p 70).



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and that he was referred to the ophthalmology clinic for review.[81] It should be noted that while the Respondent took the position that the starting sentence of eight weeks' imprisonment was neither manifestly inadequate nor manifestly excessive, it was also suggested that it "would arguably have been more appropriate" to peg the present case at Band 2 of the *Niranjan* Framework because "it was not disputed at trial that Soikat had lost consciousness for around five minutes as a result of the assault".[82]

38 As for the uplift of four weeks applied by the DJ, the Respondent submitted that this was justified on account of multiple aggravating factors, including the fact that this was a vicious group assault which had moreover been carried out in a public setting.[83] The Respondent also highlighted that the "list of negatives" relied on by the Appellant (*eg*, that Soikat did not suffer fractures) merely pointed to the absence of an aggravating factor, which was not mitigating.[84]

39 In respect of the 3rd Charge, the Respondent submitted that the sentence of four weeks' imprisonment – derived from the application of a three-week uplift to an indicative starting sentence of one week – "fairly reflect[ed] the Appellant's culpability and [could] not be said to be manifestly excessive".[85] In so far as the Appellant's criticism of the DJ's decision appeared to be focused on the uplift applied, the Respondent submitted that the three-week uplift was appropriate in light of the various aggravating factors, including the risk of

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81 NE Day 1, p 52 (lines 10–23) (ROA p 73).

82 Respondent's written submissions ("RWS") at para 36.

83 RWS at para 37.

84 RWS at para 38.

85 RWS at para 44.



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transmission of disease which the act of biting exposed the Complainant to and the fact that the attack took place in a public setting.[86]

*OM Charge*

40 In respect of the OM Charge, the Respondent – like the Appellant – accepted that the DJ was correct to apply the Modified *Kunasekaran* Framework.[87] Using this modified framework, the Respondent argued that the following offence-specific factors were present:[88]

(a) Degree of sexual exploitation

(i) The Complainant's upper breast area was intruded upon.[89]

(ii) There was skin-on-skin contact.

(iii) The contact was not fleeting, as the non-consensual physical contact lasted for approximately 90 seconds, albeit broken up by moments where the Complainant briefly managed to disengage from the Appellant.

(iv) The act of kissing is a far more intimate and physically intrusive act compared to the act of touching with one's fingers. I should point out, however, that at the hearing before me, the Respondent accepted that it could be artificial to enumerate this as an *additional* offence-specific factor as this distinction could

86 RWS at para 43.

87 RWS at paras 45–50.

88 RWS at para 51.

89 Transcript at p 35 (lines 1–5).



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simply be regarded as a *specification* of the type of skin-on-skin contact.[90]

(b) Circumstances of the offence:

(i) There was restraint involved as the Appellant had "essentially trapped [the Complainant], preventing her from moving while he repeatedly hugged and kissed her".

(ii) The Appellant was persistent in his advances and there was a degree of escalation in his actions.

(iii) The Complainant described the Appellant's acts as being "[v]ery disrespectful" and she felt angry with the Appellant.

41 Citing *Thangarajan Elanchezhian v Public Prosecutor* [2024] 6 SLR 507 ("*Thangarajan*", at [50]), the Respondent submitted[91] that there were different justifications for categorising a case as falling within Band 2, namely:

(a) where there are two or more offence-specific factors;

(b) where there is intrusion of the victim's private parts but without skin-to-skin contact;

(c) where there is skin-to-skin contact with the victim's private parts; or

(d) where there is deception with any of the above factors.

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90 Transcript at p 30 (line 25) to p 32 (line 14).

91 RWS at para 54.



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42 *Per* the Respondent's case, the present case involved more than two offence-specific aggravating factors; and as such, the DJ was correct in pegging the case to Band 2 of the Modified *Kunasekaran* Framework.[92] The Appellant's reliance on his prior relationship with the Complainant was misplaced, as there was no mitigating value in any such prior relationship.[93] The final sentence of seven months and two weeks' imprisonment, being at the lowest end of Band 2, could not be said to be manifestly excessive.[94]

43 As for caning, the Respondent acknowledged that it did not appeal against the DJ's decision not to impose caning, but submitted that nevertheless, the DJ "would not have been wrong to impose caning on the Appellant in addition to his imprisonment term" because this was a case where there was skin-on-skin contact, there was an element of restraint, and the physical contact was prolonged.[95] At the hearing before me, the Respondent clarified that it was not seeking the imposition of caning on appeal; instead, it was making the point that since caning was not imposed when it could and should have been, this was a factor to be considered in determining whether the sentence of seven months and two weeks' imprisonment was manifestly excessive.[96]

*Total sentence*

44 As for the total sentence, while the Respondent acknowledged that the 3rd Charge and the OM Charge involved the same victim and took place very close in time, it was submitted that the offences involved the violation of distinct

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92 RWS at paras 52–53.

93 RWS at para 60.

94 RWS at para 56.

95 RWS at paras 57–58.

96 Transcript at p 38 (line 24) to p 39 (line 5).



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legally protected interests. As such, the order that the sentences for these two charges run consecutively was not in breach of the one-transaction rule.[97] Additionally, the Respondent submitted that the total imprisonment term of seven months and 18 weeks was not crushing and accurately reflected the overall criminality of the Appellant's conduct.[98]

## My findings

### *The threshold for appellate intervention*

45 I next explain my decision in respect of the sentences for the individual charges and the total sentence.

46 Parties accept that in an appeal against sentence, the appellate court will only interfere with the sentence imposed by the lower court if it is shown that (*per* the Court of Appeal in *Public Prosecutor v Kwong Kok Hing* [2008] 2 SLR(R) 684 ("*Kwong Kok Hing*") at [14]):

(a) The sentencing judge erred in respect of the factual matrix for the sentence;

(b) The sentencing judge erred in appreciating the material before the court;

(c) The sentence was wrong in principle; or

(d) The sentence imposed was manifestly excessive or inadequate. A sentence is manifestly excessive or inadequate if it requires substantial alterations rather than minute corrections: *Public Prosecutor v Siew*

97 RWS at paras 63–64.

98 RWS at para 65.



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*Boon Loong* [2005] 1 SLR(R) 611 at [22], cited in *Kwong Kok Hing* at [15].

***The VCH Charges***

*The applicable sentencing framework*

47 Parties also accept that the *Niranjan* Framework applies to the VCH Charges in this case. There are two stages to the *Niranjan* Framework (at [56]):

(a) At the first stage, the court identifies the sentencing band and an indicative starting point by considering the hurt caused by the offence. The bands are (at [61] of *Niranjan*):

| **Band** | **Hurt caused** | **Sentencing range for first-time offenders claiming trial** |
|---|---|---|
| 1 | Low harm: no visible injury or minor hurt such as bruises, scratches, minor lacerations or abrasions | Fines or up to eight weeks' imprisonment |
| 2 | Moderate harm: hurt resulting in short hospitalisation or a substantial period of medical leave, simple fractures, or temporary or mild loss of a sensory function | Eight weeks to 12 months' imprisonment |
| 3 | Serious harm: serious injuries which are permanent in nature and/or which necessitate significant surgical procedures | 12–36 months' imprisonment |

(b) At the second stage, the court calibrates the indicative starting sentence based on the following sentencing factors (at [66] of *Niranjan*):

(i) Aggravating factors:



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(A) the extent of deliberation or premeditation;

(B) the manner and duration of the attack;

(C) the victim's vulnerability;

(D) the use of any weapon;

(E) whether the attack was undertaken by a group;

(F) any relevant antecedents on the offender's part; and

(G) any prior intervention by the authorities.

(ii) Mitigating factors:

(A) the offender's mental condition;

(B) the offender's genuine remorse; and

(C) the offender's personal financial or social problems.

*The 1st Charge*

48 At the first stage of the *Niranjan* Framework, a point of dispute between parties was whether Soikat lost consciousness as a result of and/or in the midst of the assault. The Respondent maintained[99] that Soikat did in fact lose consciousness – a factor which would result in the present case falling within Band 2 of the *Niranjan* Framework. The Appellant, on the other hand, asserted that there was no loss of consciousness.

49 It is trite that the sentencing judge can only take into consideration facts which are "admitted or proved": *Cheang Geok Lin v Public Prosecutor*

[99] GD at [22] and [24(c)] (ROA pp 1044–1045).



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[2018] 4 SLR 548 at [27]; see also *K Saravanan Kuppusamy v Public Prosecutor* [2016] 5 SLR 88 at [27]. In the present case, the 1st Charge did *not* make any reference to Soikat having lost consciousness as a result of the assault by the Appellant and his fellow assailants. This was despite the fact that the charge described in some detail the physical injuries caused to Soikat by the assault ("bruising and abrasion over his right face with periorbital oedema, nasal swelling and left upper lip bruising").

50 Further, despite Soikat testifying at trial to having "fainted" as a result of the attack,[100] the DJ expressly found that none of the categories of moderate harm required for Band 2 – including "temporary or mild loss of a sensory function" – was present in this case.[101] In other words, the DJ clearly rejected Soikat's testimony about having lost consciousness. The Respondent has not appealed the DJ's finding; and on appeal, neither party has addressed in any detail the evidence on this issue. While the Respondent suggested that "it was not disputed at trial that Soikat had loss [sic] consciousness for around five minutes as a result of the assault",[102] I found no basis for this suggestion. In respect of the 1st Charge, the Appellant's defence in the trial below was one of mistaken identity – *ie*, that he and Khan were not involved in any fighting on the night of 23 July 2023 and that Soikat was assaulted by a different group of people.[103] Given the nature of the Appellant's defence, he could not – indeed, would not – have been in a position to either dispute or accept the suggestion that his attack on Soikat caused the latter to lose consciousness.

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100 See, for example, NE Day 5, p 8 (lines 28–30) (ROA p 418).

101 GD at [41] (ROA pp 1051–1052).

102 RWS at para 36.

103 GD at [13] (ROA pp 1040–1041).



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51 In light of the above considerations, it would be inappropriate for me to interfere with the DJ's finding on this issue. I therefore accept her finding that there was no "temporary or mild loss of a sensory function" on Soikat's part which would warrant the 1st Charge being classified as a Band 2 case.

52 Having regard to the evidence adduced before the DJ, I see no reason to interfere with her decision to place the 1st Charge at the top end of Band 1 of the *Niranjan* Framework. The facial contusions and bruising detailed in Soikat's Medical Report – and shown in the photographic evidence – were extensive ("bruising and abrasion over his right face with periorbital oedema…nasal swelling and left upper lip bruising"[104]); and while Soikat was not hospitalised, he was given seven days' medical leave. It was also not disputed that the assault left him bleeding. In the circumstances, I do not think the DJ was wrong to calibrate the indicative starting sentence at eight weeks' imprisonment.

53 At stage two of the *Niranjan* Framework, I agree with the DJ and the Respondent that the following aggravating factors were present:

> (a) This was a group assault. In this connection, the Appellant's submission that Soikat's injuries were "not as aggravated" as they *could* have been in a group attack was misconceived and without merit. In considering the aggravating effect of a group attack at stage two of the *Niranjan* Framework, the question is "whether the fact that more than one offender was present resulted in (a) a higher degree or a greater likelihood of fear to the victim; (b) had the effect of encouraging, facilitating or perpetuating the continued commission or escalation of the offence; and/or (c) resulted in a higher degree of actual and potential

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104 ROA p 1068.



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harm to the victim": *Public Prosecutor v Ong Chee Heng* [2017] 5 SLR 876 at [34]. On the facts of this case,[105] all three considerations were present here.

(b) The attack was unprovoked.

(c) The manner of the attack was vicious and persistent. Here again, the Appellant's suggestion that the attack was "not as vicious as the words 'group attack' tend to imply" was misconceived and without merit. The evidence at trial showed – and the DJ found[106] – that the Appellant and his accomplice Khan targeted Soikat's head (a vulnerable part of the body), and that they continued assaulting him even after he fell to the ground.

(d) The attack took place in a public setting – *ie*, on a grass patch near the MRT station (a public place with passers-by and/or to which members of the public had access). This is an aggravating factor for sentencing purposes because as the High Court aptly observed in *Public Prosecutor v Shoo Ah San* [2021] SGHC 251 (at [13]):

> All our citizens are entitled to expect to walk our streets in peace, at any time of day or night. While not downplaying attacks in other contexts, that interest has to be protected by a heavy measure of deterrence to drive home the message to those who might otherwise allow their passions or unhappiness about a dispute to get the better of them and attempt murder or violence on our streets or other public spaces.

54 As against the above aggravating factors, there were no mitigating factors in this case. While it is true that the Appellant had no previous

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105 GD at [9] (ROA pp 1037–1039).

106 GD at [43(d)] (ROA p 1052).



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convictions on record, this simply amounted to a neutral factor in sentencing (see *BPH v Public Prosecutor* [2019] 2 SLR 764 at [85]).

55 All things considered, I find the four-week uplift applied by the DJ at the second stage to be appropriate. The "one to two weeks" suggested by the Appellant in oral submissions would be derisory, given the aggravating factors present in this case. For the reasons explained, therefore, I find that the eventual sentence of 12 weeks' imprisonment was appropriate for the 1st Charge.

*The 2nd Charge*

56 In respect of the 2nd Charge, the Appellant has confirmed that he is not appealing against the sentence of one week's imprisonment – which sentence in any event I find to be appropriate on the facts.

*The 3rd Charge*

57 In respect of the 3rd Charge, I agree with parties that given the nature of the hurt caused to the Complainant, an indicative starting sentence of one week's imprisonment is appropriate at the first stage of the *Niranjan* Framework.

58 At the second stage of the *Niranjan* Framework, I find that the three-week uplift applied by the DJ was not manifestly excessive. I agree with the DJ and the Respondent that there were multiple aggravating factors present. First, as the Respondent pointed out, the Appellant's act of biting the Complainant's cheek was a deplorable act of petty revenge: clearly, the Appellant was seeking retaliation against the Complainant after she rejected his sexual advances.



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59 Second, the act of biting is aggravating because it carries the risk of transmission of disease. In this connection, the Appellant's argument about the lack of infection or "active bleeding" is misconceived and without merit. What the court is concerned about at the second stage of the *Niranjan* Framework is the manner of the attack (see *Niranjan* at [66(b)]) – and not the actual extent of the hurt caused by the attack (the latter having been taken into account at the first stage of the *Niranjan* Framework). The point is that biting is an inherently dangerous means of causing hurt to another person.

60 Third, as explained at [53(d)] above, it is aggravating that the offence was committed in a public setting.

61 Having regard to the aggravating factors present and the absence of any mitigating factors, I find that the final sentence of four weeks' imprisonment imposed for the 3rd Charge was not manifestly excessive.

***The OM Charge***

*The applicable law*

62 In respect of the OM Charge, parties were agreed that the Modified *Kunasekaran* Framework – as set out at [57] of the DJ's GD – should apply to OM offences committed after 1 March 2022. In gist, the legislative amendment of 1 March 2022 brought about a 50% increase in the maximum punishment for offences under s 354(1) PC, by raising the maximum imprisonment term from two years to three years. The Modified *Kunasekaran* Framework modifies the framework set out in *Kunasekaran* (which was the framework established for s 354(1) PC offences committed before 1 March 2022) by increasing the sentencing range in each band by 50%. I was given to understand that the Modified *Kunasekaran* Framework has been applied by various district courts



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in sentencing offenders for OM offences committed after 1 March 2022 (for example, in *Public Prosecutor v Wong Teck Guan* [2023] SGMC 64).

63 In *Thangarajan,* Sundaresh Menon CJ observed at [42] that the sentencing bands in *Kunasekaran* "may need to be readjusted to account for the increase in the maximum sentence". It was not necessary for Menon CJ to deal with this issue in *Thangarajan* because the OM offence in that case was committed before the relevant legislative amendment came into effect. Since *Thangarajan*, however, there has been no reported High Court decision explicitly endorsing the Modified *Kunasekaran* Framework.

64 Having considered parties' submissions, I agree that the proportionate and linear increase which the Modified *Kunasekaran* Framework effects in the sentencing range in each band is appropriate. Notably, a similar approach was adopted by See Kee Oon J (as he then was) in *Niranjan*. Prior to *Niranjan,* the relevant sentencing framework for s 323 PC offences was that set out in *Low Song Chye v Public Prosecutor* [2019] 5 SLR 526 ("*Low Song Chye*"). Following the decision in *Low Song Chye*, amendments were made to s 323 PC on 1 January 2020, which increased the maximum imprisonment term for such an offence by 50% – or, as See J put it at [57] of *Niranjan*, "by a factor of 1.5 times" – from two years to three years. In *Niranjan,* See J endorsed the district judge's approach of applying a proportionate and linear increase in the sentence in each band of the sentencing framework (at [60]):

> I agreed with the DJ's approach of extrapolating the indicative imprisonment term in each band by 1.5 times in a proportionate and linear fashion. As the DJ observed, increasing the ranges of the various sentencing bands would allow the court to utilise the full spectrum of the punishment prescribed by law. At the same time it would allow the court to consider the full extent of any aggravating and mitigating factors that may be present. The elements of the primary offence and the relevant sentencing considerations remain unchanged. All that had changed through



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> the s 323 PC amendments was the enhancement of the maximum permissible punishment, and scaling the sentencing bands upwards accordingly would reflect Parliament's intent to enlarge the sentencing range. As the Prosecution pointed out, the same approach was endorsed by the High Court in *Haleem Bathusa bin Abdul Rahim v Public Prosecutor* [2023] 3 SLR 1284 at [44]. This was also the approach taken in the State Courts in cases such as *Public Prosecutor v Fri Yi* [2022] SGDC 81 at [76].

65 A similar approach was also adopted by the three-judge court of the High Court in *Ng En You Jeremiah v Public Prosecutor* [2025] 4 SLR 395 ("*Jeremiah Ng*"), in dealing (*inter alia*) with the offence of drink driving under s 67(1)(*b*) read with s 67(2)(*a*) of the Road Traffic Act (Cap 276, 2004 Rev Ed) ("RTA"). Noting that amendments to the RTA passed by Parliament in 2019 had doubled the punishments imposed under s 67 RTA, the High Court in *Jeremiah Ng* held, at [93], that the sentencing framework established in *Stansilas Fabian Kester v Public Prosecutor* [2017] 5 SLR 755 ("*Stansilas*") should be recalibrated by doubling the ranges of the imprisonment terms for each harm-culpability permutation. In so holding, the High Court referred to See J's decision in *Niranjan* and similarly observed that increasing the ranges in this manner would allow the sentencing court to utilise the full spectrum of the punishment prescribed by law and, at the same time, to consider the full extent of any aggravating and mitigating factors (at [94] of *Jeremiah Ng*).

*Summary of the new framework for the OM Charge*

66 In the circumstances, I endorse the DJ's adoption of the Modified *Kunasekaran* Framework, which involves extrapolating the indicative imprisonment term in each band of the *Kunasekaran* Framework in a proportionate and linear manner, in line with the 50% increase in the maximum imprisonment term prescribed for the offence under s 354(1) PC. This framework has three stages:



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(a) At the first stage, the court identifies the offence-specific factors present in the case and the *extent* to which each factor features. These offence-specific factors include:

(i) *Degree* of sexual exploitation. This includes a consideration of:

(A) the part of the victim's body that the offender touched;

(B) how the accused touched the victim; and

(C) the duration of the outrage of modesty.

(ii) Circumstances of the offence. This includes a consideration of:

(A) the presence of premeditation;

(B) the use of force or violence;

(C) the abuse of a position of trust;

(D) the use of deception;

(E) the presence of other aggravating acts accompanying the outrage of modesty; and

(F) the exploitation of a vulnerable victim.

(iii) Harm caused to the victim, whether physical or psychological, which would usually be set out in a victim impact statement or medical reports.

(b) Based on the consideration of these offence-specific factors, the court will determine the gravity of the offence and identify the



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sentencing band within which it should be placed. The sentencing bands are as follows:

| Band | Description | Sentencing range |
|---|---|---|
| 1 | Cases that do not present any, or at most one, of the offence-specific factors, and typically include cases that involve a fleeting touch or no skin-to-skin contact, and no intrusion into the victim's private parts. | Fine or up to 7.5 months' imprisonment.<br>Caning is *generally* not imposed. |
| 2 | Cases where two or more of the offence-specific factors present themselves. The lower end of the band involves cases where the private parts of the victim are intruded, but there is no skin-to-skin contact. The higher end of the band involves cases where there is skin-to-skin contact with the victim's private parts. It would also involve cases where there was the use of deception. | 7.5–22.5 months' imprisonment.<br>Caning should be considered, with a starting position of three strokes of the cane. |
| 3 | Cases where numerous offence-specific factors present themselves, especially factors such as the exploitation of a particularly vulnerable victim, a serious abuse of a position of trust, and/or the use of violence or force on the victim. | 22.5–36 months' imprisonment.<br>Caning ought to be imposed unless there are exceptional mitigating factors. Given the inherent severity of cases falling in this band, at least six strokes of the cane are generally imposed. |

(c) At the final stage, the court will consider the relevant *offender*-specific aggravating and mitigating factors, and calibrate the indicative starting sentence accordingly.



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67 I make two other points about the application of the Modified *Kunasekaran* Framework. First, in noting that caning will *generally* not be imposed for cases falling within Band 1 of the Modified *Kunasekaran* Framework, I acknowledge that s 354(1) PC does allow the court to impose caning. In *GCO v Public Prosecutor* [2019] 3 SLR 1402 ("*GCO*"), See J observed at [94] that:

> Caning has typically been imposed on offenders in cases applying the *Kunasekaran* framework where there was skin-to-skin contact, or the contact was prolonged, or there was an element of restraint applied to the victim, although *these aggravating factors should not be taken to be exhaustive.* [emphasis added in italics]

68 In *Haji Muhammad Faisal bin Johar v Public Prosecutor* [2025] SGHC 102 ("*Haji Muhammad*") at [78], See JAD explained that the imposition of caning will generally depend on (a) the aggravating factors present; and (b) the applicable sentencing band:

> The authorities also do not suggest that caning will generally only be imposed where the contact was skin-to-skin. They focus instead on whether the offence involved an intrusion upon the victim's private parts or sexual organs (see *Kunasekaran* at [50], referring to *Public Prosecutor v Chow Yee Sze* [2011] 1 SLR 481) *and more generally on the applicable sentencing band.* [emphasis added in italics]

69 I agree with See JAD's view that the imposition of caning should generally be pegged to the applicable sentencing bands, since these bands represent the inherent severity of the offence. This was the approach adopted in *GBR v Public Prosecutor* [2018] 3 SLR 1048 ("*GBR*"), albeit for OM offences against a person under 14 years of age under s 354(2) PC. In *GBR*, See J held that for Band 1 cases, "caning is generally not imposed" (at [32]). For Band 2 cases, "[c]aning will nearly always be imposed, and the suggested starting point would be at least three strokes of the cane" (at [33]). For Band 3 cases, "[c]aning ought to be imposed, and the suggested starting point would be at least six



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strokes of the cane" (at [37]). Although these remarks were made in the context of s 354(2) PC offences, the only key difference between s 354(2) and s 354(1) PC is that the former concerns victims below 14 years of age.

70 For the reasons stated, therefore, the approach to caning adopted in *GBR* can and should likewise apply to s 354(1) PC offences under the Modified *Kunasekaran* Framework, subject to some degree of calibration to account for the more egregious nature of s 354(2) PC offences.

71 Second, I note that in respect of the first stage of the Modified *Kunasekaran* Framework, the Appellant has sought to argue that the term "private parts", in the context of sexual offences, must refer strictly to the victim's genitalia, or where the victim's breasts were involved, specifically to the nipples – but not to any other part of the breasts (see [32] above). I find the Appellant's argument to be devoid of merit. I explain.

72 While the Appellant claimed that *Kunasekaran* and *GBR* provided support for his argument, a perusal of the judgments in these two cases showed his claim to be baseless. It is true that in *Kunasekaran*, Chan Seng Onn J (as he then was) referred to the victim having "merely alleged that the appellant had touched her groin area, as opposed to her private parts" (at [55]). However, Chan J also went on (at [55]) to state that –

> This distinction matters because whereas the private parts refer to the victim's genitalia per se, the groin area is merely the junctional region between the abdomen and thigh, which includes the genitalia. In other words, if the victim's groin area is touched, it does not ipso facto mean that her private parts have been intruded upon; on the other hand, if the victim's private parts have been intruded upon, it should ipso facto mean that the groin area is touched.



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73 What the Appellant fails to appreciate is that, in *Kunasekaran,* the subtle differences which Chan J was seeking to highlight mattered *because of the victim's testimony* in that case. The distinction sought to be drawn in *Kunasekaran* was between the "groin area", which was a larger area of the body, and the "private part", which – in the context of the groin area – could only be understood as referring to the victim's genitalia. Nothing in Chan J's judgment in *Kunasekaran* supports the Appellant's proposition that the term "private parts" must generally be understood to exclude all areas of the breast save for the nipples. Nothing in See J's judgment in *GBR* supports this proposition either. There are also numerous cases in which the courts have used the term "private parts" when referring to the victim's breasts. In *Ng Kum Weng v Public Prosecutor* [2021] SGHC 100, for example, Kannan Ramesh J (as he then was) held at [83] that the OM offences in that case fell within Band 2 of the *Kunasekaran* Framework because the offender "touched the victims very close to their private parts namely, their breasts".

74 I add that it is unhelpful, in any event, for parties in such cases to attempt to categorise the seriousness of the OM offence committed by seeking to pin down a rigid definition of the term "private parts" and then arguing about whether the act of molestation in their case falls strictly within such definition. The overarching inquiry in the *Kunasekaran* Framework (and in the Modified *Kunasekaran* Framework) involves a determination of the *degree* of sexual exploitation. While *one* factor informing such an inquiry is the body part intruded on, dogmatic attempts to "strictly" define "private parts" are unhelpful to the final inquiry, and a commonsensical approach should be preferred.



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*Application to the present facts*

(1) Imprisonment term

75 Applying the Modified *Kunasekaran* Framework to the OM Charge in this case, I find that the present case falls within Band 2 of the framework, and that an indicative starting sentence of seven months and two weeks' imprisonment is appropriate. I agree with the DJ and the Respondent that the following offence-specific factors were relevant.

76 First, the DJ found that the Complainant's right upper breast area was intruded upon. Contrary to the Appellant's submission, this finding was amply justified on the evidence adduced at trial. PW7 Ma Wendilyn P. Dabon, who witnessed the commission of the OM offence, testified that the Appellant kissed the Complainant's "*breast*".[107] The Complainant herself also testified that the Appellant had kissed her "right chest", which was exposed at that point in time.[108] CCTV footage tendered to court[109] also showed that the Complainant's clothing on the night of the incident did in fact leave the upper parts of her breasts bare and exposed. It was after having reviewed these pieces of evidence that the DJ concluded that "the focal point pertained to [the] Complainant's visibly exposed chest area" which was the "upper part of the breast area".[110] I am satisfied that there is no reason for me to interfere with her findings. While the OM Charge referred to the "right chest area", there was nothing to preclude the DJ from finding that *the specific portion of the right chest area* which the Appellant kissed was the Complainant's right upper breast area.

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107 NE Day 3, p 24 (line 30) to p 25 (line 5) (ROA pp 214–215).

108 NE Day 6 p 24 (line 28) to p 25 (line 10) (ROA pp 498–499).

109 ROA p 1090.

110 GD at [64(a)] (ROA p 1061).



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77 Second, there was indisputably skin-on-skin contact. In this connection, I accept the Respondent's submission that the act of kissing with one's mouth represents a more intimate form of skin-on-skin contact compared – for example – to the act of touching with one's hand; and that more intimate forms of skin-on-skin contact would generally represent a greater degree of sexual exploitation.

78 Third, there was also no dispute that the contact in this case was not fleeting: the entire episode of hugging and kissing lasted for about 90 seconds, albeit interspersed with some moments where the Complainant was able to break free briefly from the Appellant.

79 On the other hand, while the DJ found it aggravating that the Appellant "restrained" the Complainant by hugging her tightly, I do not think it is correct to regard this element of "restraint" as a distinct offence-specific aggravating factor. This is because in the present case, the act of hugging formed part of the *actus reus* specified in the OM Charge. To treat a constituent act of the OM Charge as an aggravating factor in sentencing would be to engage in double counting: see, in this respect, Menon CJ's judgment in *Public Prosecutor v Raveen Balakrishnan* [2018] 5 SLR 799 ("*Raveen Balakrishnan*") at [84] (citing the decision of the Court of Appeal in *Chang Kar Meng v Public Prosecutor* [2017] 2 SLR 68 at [25]).

80 With respect, I also disagree with the DJ's finding[111] that the Appellant's behaviour in persisting in his advances to the Complainant and the escalation in his actions constituted another distinct offence-specific aggravating factor. The fact that the Appellant was persistent in trying to kiss the Complainant is already

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111 GD at [64(f)] (ROA p 1062).



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accounted for under stage one of the Modified *Kunasekaran* Framework on the basis that the contact was not fleeting. The fact that the Appellant escalated his behaviour by biting the Complainant after his unsuccessful attempts to kiss her is also already accounted for as an aggravating factor in relation to the 3rd Charge; and the biting itself formed the very basis of the 3rd Charge. To treat these matters as distinct offence-specific aggravating factors in relation to the OM Charge would again amount to double-counting.

81 I also disagree with the DJ's decision to take into account, as an aggravating factor, the Complainant's evidence that she found the Appellant's conduct "very disrespectful" and that she did not consent to it.[112] With respect, these matters cannot constitute aggravating factors as they are elements of the OM Charge, *viz*, that the Appellant acted with intention to outrage the Complainant's modesty.

82 Having regard to the offence-specific factors which I find to be present in this case, I agree with the DJ and the Respondent that the present case falls within Band 2 of the Modified *Kunasekaran* Framework. I am also of the view that the degree of sexual exploitation in this case was such as to place this case at the lowest end of Band 2. While the entire episode of hugging and kissing lasted for about 90 seconds and while there was skin-on-skin contact (*viz,* the Appellant's act of kissing the Complainant's right upper breast area), the actual kiss itself was a fleeting one.[113]

83 At the next stage of the Modified *Kunasekaran* Framework, I agree with the DJ that there were no offender-specific aggravating or mitigating factors.

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112 GD at [64(g)] (ROA p 1062).

113 NE Day 6, p 35 (lines 5–11) (ROA p 509).



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While the Appellant has made much of the fact that the Complainant was his former girlfriend (even referring to them as having been in an "on-and-off" relationship), there is no basis – whether legally or logically – for suggesting that the existence of a former romantic relationship *per se* carries mitigating weight.

84 For these reasons, I find the DJ's eventual sentence of seven months and two weeks' imprisonment to be appropriate.

(2) Caning

85 For OM cases falling within Band 2 of the Modified *Kunasekaran* Framework, caning should be considered, with the starting position being three strokes of the cane. As to whether caning should be imposed for the OM Charge in this case, having considered the facts of the case, I agree with the DJ that caning need not be imposed for the OM Charge. As I alluded to earlier, while there was skin-on-skin contact with the upper part of the Complainant's right breast, this instance of skin-on-skin contact (*viz,* the Appellant's kiss) was fleeting. In all, the circumstances of this OM offence did not appear to me to warrant a sentence of caning.

***Total sentence***

*Consecutive sentences*

86 In so far as the DJ decided to run the sentences for the 1st Charge, 3rd Charge and the OM Charge consecutively, I see no reason to fault her decision. As the DJ and the Respondent have both pointed out, although the 3rd Charge and the OM Charge involved the same victim (*ie*, the Complainant) and although they were committed proximately in terms of time and space, they involved distinct legally protected interests. It was therefore not wrong in



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principle for the DJ to order that the sentences for these two offences run consecutively: *Mohamed Shouffee bin Adam v Public Prosecutor* [2014] 2 SLR 998 at [30]–[32].

*Totality principle*

87 Lastly, I consider the application of the totality principle to the total sentence imposed on the Appellant.

88 The totality principle consists of two limbs. First, the sentencing court examines whether the aggregate sentence is substantially above the normal level of sentences for the most serious of the individual offences committed; and second, the sentencing court examines whether the effect of the aggregate sentence on the offender is crushing and not in keeping with his past and future prospects: *Soh Chee Wen v Public Prosecutor* [2026] 1 SLR 214 ("*Soh Chee Wen*") at [69]. Ultimately, the application of the totality principle requires the court to assess whether the totality of the offender's aggregate sentence is sufficient and proportionate to the totality of his criminal behaviour: *Soh Chee Wen* at [71]–[72].

89 I am satisfied that the total sentence of seven months and 18 weeks' imprisonment imposed by the DJ does not breach either limb of the totality principle. In my view, the total sentence accurately reflected the Appellant's overall criminality. While it is true that the four offences were committed within a relatively short span of time on the same night, the Appellant attacked two different victims; and his conduct in attacking them showed a streak of vindictive viciousness: for example, he continued assaulting Soikat even after the latter fell bleeding to the ground; and he bit the Complainant on her face when she resisted his sexual advances. He also showed a complete lack of remorse throughout the trial and on appeal: at trial, for example, he alleged that



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the Complainant had made up a story about being molested because she wanted to avoid potential trouble with her employer;[114] and on appeal, he even had the temerity to suggest – through his counsel – that the bite suffered by the Complainant on her face was "something… on the borderline of a hickey".[115]

90 As I find that the totality principle was not breached in this case, there is no basis for me to interfere with the total sentence imposed by the DJ.

**Conclusion**

91 For the reasons explained, I find no merit in the Appellant's appeal against sentence; and I dismiss the appeal accordingly.

Mavis Chionh Sze Chyi
Judge of the High Court

Pang Khin Wee (I.R.B Law LLP) for the appellant;
Khoo Tian Lun Nicholas and Clara Low Puay Cheng
(Attorney-General's Chambers) for the respondent.

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114 GD at [16] (ROA pp 1041–1042).

115 Transcript at p 9 (lines 30–31).



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